

EURAFREP, INC.

IBLA 80-616

Decided June 25, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting high bid in competitive oil and gas lease sale W-66870.

Reversed and remanded.

1. Oil and Gas Leases: Competitive Leases -- Regulations: Waiver

Although under the Departmental regulations a competitive bidder in an oil and gas lease sale must certify as to the acreage limitations and must submit a statement of citizenship or of corporate qualifications under 43 CFR 3120.1-4, failure to comply with the regulations does not require rejection of the bid. In competitive lease offers, where price rather than priority of filing is the primary criterion, certain deviations from mandatory requirements are curable defects.

APPEARANCES: Stanley L. Gragis, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Eurafrep, Inc., has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated March 31, 1980, rejecting its high bid for parcel No. 12 for a competitive oil and gas sale originally held on January 17, 1979. The parcel was previously involved in an appeal to this Board in Davis Oil Co., 43 IBLA 320 (1979), where we affirmed a State Office dismissal of a protest against rejection of that company's bid for this same parcel No. 12. When the case was returned to BLM following the resolution of the Davis appeal, the State Office found appellant's high bid unacceptable for the stated reasons:

No certification as to acreage holdings was made.

The citizenship block was checked and also item 2 specifying a Delaware Corporation #W-56943

The individual signing the bid form is surely not a corporation.

Although the individual signing the bid indicated his title, there is no reference on the bid form itself, as to who was the actual bidder.

Appellant contends on appeal that in essence it was not given the opportunity to supply certification as to its acreage holdings or to demonstrate its qualifications to hold a lease to parcel No. 12. It argues, inter alia, that its bid should not be rejected for these cited irregularities in the absence of any showing that BLM has been misled by its bid form or that the deficiencies interfered with the orderly conduct of the lease sale or resulted in its gaining some advantage over other bidders at the sale.

[1] The regulation, 43 CFR 3120.1-4 specifically requires bidders for competitive leases to comply with the regulations in subpart 3102 which includes certification as to acreage limitations under 3102.2-2. It also specifically provides that "[e]ach bidder must submit with his bid a statement over the bidder's own signature with respect to citizenship and interests held. If the successful bidder is a corporation, it must also file a statement similar to that required by 3102.4-1." This Board has held that failure to comply fully with such requirements does not necessarily require rejection of the offer. Black Hawk Resources Corp., 50 IBLA 399 (1980); Mesa Petroleum Co., 37 IBLA 103 (1978). In competitive lease offers, where price, rather than priority of filing as in noncompetitive lease offers, is the primary criterion, some deviations from mandatory regulatory requirements, such as a failure to submit a statement of citizenship, or of corporate qualifications have been held to be curable defects. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, B.E.S.T., Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976); Silver Monument Minerals, Inc., 14 IBLA 137 (1974); North American Coal Corp., 74 I.D. 209 (1967). The criteria used to decide whether a requirement can be cured have been whether the default gives one bidder an advantage over another, or is destructive to the orderly conduct of lease sales. The essence of the cases is a concern for fairness to all interested parties and the reasonable consequences of the action.

In our most recent case on this issue Black Hawk Resources Corp., supra, we considered the same irregularities that BLM has found unacceptable in this particular offer and we held them to be curable defects. The circumstances of the instant case dictate the same result. For a more detailed examination of the rationale for curing the failure to meet such a requirement, see our discussion in Black Hawk at 402-05.

Accordingly, pursuant to the authority delegated to the Bureau of Land Management by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded to BLM to afford appellant a reasonably limited opportunity to make the necessary showings, e.g., 30 days from service of notice. Upon compliance therewith, the lease is to issue to appellant, all else being regular.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Gail M. Frazier
Administrative Judge

